

COMMITTEE ON LAND USE
(Standing Committee of Berkeley County Council)

Chairman: Mr. Phillip Farley, Council Member District No. 1

A meeting of the **COMMITTEE ON LAND USE**, Standing Committee of Berkeley County Council, was held on **Monday, April 11, 2011**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 6:11 pm.

MEMBERS: Chairman Phillip Farley, Council District No. 1; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Jack H. Schurlknight, Council District No. 6; Committee Member Caldwell Pinckney, Jr., Council District No. 7; Committee Member Steve C. Davis, Council District No. 8. Supervisor Daniel W. Davis; Ms. Nicole Ewing, County Attorney and Ms. Barbara B. Austin, Clerk of County Council.

ALSO PRESENT: Council Member Tim Callanan, District No. 2, ex officio; Council Member Robert O. Call, District No. 3, ex officio.

Council Member Dennis Fish, District No. 5, ex officio was not present.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Chairman Farley: Good evening, ladies and gentlemen. I'd like to call the Land Use Committee to order. First on the agenda is the approval of minutes from the February 14, 2011."

Committee Member S. Davis: "Move for approval"

Committee Member Schurlknight: "Second"

Chairman Farley: "I have a motion and a second. Are there any corrections? (No Response) All in favor please say Aye? (Ayes) Opposed? (No Response) Minutes stand approved as presented."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

A. Samuel H. Altman, Esq., Derfner, Altman & Wilborn, LLC, Re: Request for extension of time addressed in two year reverter clause of original deed that conveyed two acres of property to Franklin C. Fetter Family Center, Inc.

Chairman Farley: "Mr. Altman?" (No Response)

Committee Member S. Davis: "Move for approval"

Committee Member Pinckney: "Second"

Chairman Farley: "I have a motion and a second. Any discussion? (No Response)"

Committee Member Callanan: "Mr. Chairman?"

Chairman Farley: "Mr. Callanan"

Committee Member Callanan: "What is the extent of this? Can we get the story behind this?"

Committee Member S. Davis: "Yes we do. This is some property that was deeded to this agency, Franklin C. Fetter, who does a tremendous job in our community helping folks that don't have health insurance. They have made a commitment to expand in the Cross area, which is District 7. Sometimes in government processes sometimes it gets delayed. They are asking for some additional time to actually draft a deed, but their commitment is still in place in reference to constructing a more larger clinic in the Cross community."

Committee Member Callanan: "Ok, thank you."

Chairman Farley: "We have a motion and a second. All in favor please say Aye? (Ayes) Opposed? (No Response) Motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** the request for extension of time addressed in **two year reverter clause** of original deed that conveyed two acres of property to **Franklin C. Fetter Family Center, Inc.** The motion passed by unanimous voice vote of the Committee.

B. Consideration prior to First Reading an ordinance to amend certain sections of **Ordinance No. 01-8-35, the Berkeley County Zoning and Development Standards Ordinance**, as amended, by deleting references to borrow pits and creating conditions and provisions for the regulation of mines within the Flex-1, HI and LI zoning districts.

[Staff recommended approval]

[Planning Commission recommended approval - Vote 6-2]

Chairman Farley: "Mr. Greenway?"

Mr. Eric Greenway, Zoning Administrator: "Thank you, Mr. Chairman. County Council back in April 2009 as part of the clustering subdivision amendment, adopted a provision as a part of that subdivision amendment that basically prohibited what was previously a definition of a borrow pit from the Use Table for Flex-1. The definition of a borrow pit at that point in time in the ordinance essentially allowed mining by default in the Flex-1 zoning classification. We removed that in April 2009. Some months later several folks approached the County about doing mines in the Flex-1 Zoning District. Some of you all found out at that time that was no longer allowed in the Flex-1 zoning classification so you all asked us to start drafting an amendment to

remedy that problem and that prohibition from mining in Flex-1. Staff did that. The staff version of the mine succeeded in making no one happy. So you all recommended that the Planning Commission chairman appoint a nine member task force that would consist of three Planning Commission members, three mining industry representatives and three concerned citizens, property owners in the County. That body was convened on February 11, 2010 for it's first meeting and they concluded their meetings on January 27, 2011. So we met for almost a year trying to go through and research the mining issue and they did a good job and they did a thorough job researching that. We have representatives from DHEC come in to tell us, Mark Williams from DHEC came in and spoke to the task force on what they regulate and the types of things that they do. All of that resulted in the Mining Task Force in recommending a new amendment to you all to deal with the mining proposal. That vote was an approval on a 5-3 vote with two mining industry representatives and one Planning Commissioner voting against the recommendation of approval. Staff recommends approval of the amendment to you all and the Planning Commission after review the Mining Task Force proposal made a recommendation, changed the recommendation of the Mining Task Force to reduce the 1,000 foot separation requirement for dwellings and mine operations to 500 feet. That vote was a recommendation of approval to you all on a 6-2 vote with two of the Planning Commissioners and this is kinda complicated, so I may have to go through this again. Two of the Planning Commissioners that served on the Mining Task Force voted in favor of the Mining Task Force recommendation, but voted against the Planning Commission recommendation. I don't want you guys to read that as two members of the Planning Commission being against the mining amendment. It is essentially the way I interpret that is that two members of the Planning Commission were against the amendment with the recommendation to make the separation between mine sites and houses 500 feet instead of 1,000 feet. I can go through, that's the background and this history of this situation. I have a couple of more slides on this particular issue but I do not want to bore you all and I do not want to take more time that you all are willing to devote to this, this evening. I can either continue on with my presentation if you guys want me to continue with the details of the amendment or I can answer any questions you all may have. One of things, I will say one additional thing if I may real quickly, one of the things, two terms that you are going to hear a lot as we go through this process is the term called a 'conditional use' and a term called 'special exception'. I have defined those on the screen for you. Essentially a conditional use means that it is a use allowed in the zoning district that has certain conditions associated with it in order for that use to be allowed in that zoning district, those conditions have to be satisfied. A special exception is a similar situation that generally has conditions associated with it but it requires a public hearing and only the Board of Zoning Appeals in the State of South Carolina has the authority to grant special exception approvals. Again, I will leave it up to you all, the Committee and the Council as a whole, as to how you all want me to proceed. I can answer questions or I can I can go through the details."

Committee Member Pinckney: "Mr. Chairman?"

Chairman Farley: "Yes sir"

Committee Member Pinckney: "Mr. Greenway, first of all, let me say I do thank the special committee and all of the members that actually participated in this long process and

coming up with some resolve, but let me ask you, what would be the advantage of not having this amendment in reference to the future development and growth of Berkeley County, knowing that there are some raw materials that we must have?"

Mr. Greenway: "Currently I need to point out to Council, that currently in Flex-1, mining in any shape or form is prohibited. If this amendment or some other proposal does not get adopted soon, the rules on the books right now that I have to enforce, says that mining is a prohibition in Flex-1. The denial of this amendment without some sort of alternative would still mean that mining would not be permitted in Flex-1."

Committee Member Pinckney: "So, as a follow up question with that, know that there are many roads to be constructed in Berkeley County with us being one of the fastest growing counties in the state, would it be safe for me to say that with this amendment that would enhance the opportunity to get the much needed material since it is allowing mining to take place in Flex-1?"

Mr. Greenway: "I'm going to kinda dance on this issue."

Committee Member Pinckney: "Am I putting you on the spot?"

Mr. Greenway: "Well, no, you are not putting me on the spot. It is just that if I say yes, I am going to have as many people come up later on tonight and tell you that it will not do that. The process that has been set up here, particularly in a Flex-1 classification. We went into this with a kind of a...the Task Force went into this with kind of an idea of setting up a tiered approach to dealing with the mining issue. We were dealing with the private pond issue, if you recall, you all had some people come in and complain about that a little over a year ago. The Task Force kinda divided those sites and those issues into two separate categories. Mines five acres or less would be approved by conditional use, so there are conditions associated with it, but once those conditions are satisfied, then I, as the Administrative Officer, can issue the permit to allow the mining to occur. Mine sites greater than five acres or greater than 20 feet deep would go through the special exception process. I think that is where the breakdown occurs with people saying that that is a cumbersome process. I, as a Planning person, I'm in favor of the special exception process. I've supported that from day one. My position on that has not changed. That provision was in the amendment that we put before you all back in August of 2009. I think you are creating an opportunity by doing that. Mining may be appropriate. Mining is a need in the County. We all acknowledge that mining is a need to be able to develop. But you are creating an opportunity for the public to have a voice in the process. A voice that someone, if there is a legitimate concern and facts behind their concern that they can present to the BZA. The BZA can say we understand that we need mining, but we may not need mining in this particular location. I've got a bunch of people behind me out here that could throw up a hundred other reasons as to why I'm being correct about that and I'm glad to hear from those folks. I've heard from them already. That is my position on the situation that you are creating a process where the people can have a voice in their community and I believe zoning and planning belongs to the community. Some people are not going to have a problem with the mine coming into their neighborhood. Some people are. Those people that are, if they can put forth legitimate reasons

as to why mining would not be appropriate in their neighborhood, then I think that they should have a right to voice that concern to the BZA and have the BZA consider that concern.”

Committee Member Pinckney: “Mr. Chairman, this will be my last. Hopefully, comment on it. It is no secret that I do represent the unincorporated part of Berkeley County. I’ve come to realize that one size does not fit all. I also come to realize that when you start talking about coming into peoples’ community and disrupting the community, if you don’t live in that community, then sometimes we do it with not enough sensitivity. But on the flip side of that, I also know that there is some much needed material that is needed out of the unincorporated part of Berkeley County. My concern is that with this amendment, that we use as much sensitivity as we possibly can in extracting what we need for the roads of Berkeley County so that they can be win-win for everybody involved. I know that I’ve got one situation, one property owner, there is no residence anywhere close to his property. I think in that particular case he should be able to go ahead and do what he needs to do in that particular case. Whereas in other instances, it won’t be that. I’m just hoping that all of us, we look at things as realistically and as equitable as we possibly can for the good of everybody in Berkeley County. The residents of the various communities and the county as a whole. Because we do need roads and what have you, but there was some fear factors being put out there, at least that is what I call it, that if we don’t allow this to happen, then we are not going to be able to do this and we are not going to be able to do that. My understanding of it is that because now we are allowing to come into Flex-1, that is going to enhance what we need to do in order to get the things done in Berkeley County and if I am wrong in coming to that conclusion, would you please sir, tell me so. It’s fine. It’s ok if you tell me if I am wrong.”

Mr. Greenway: “No, no. I think there is a fear factor on both sides of the equation here. I think folks are saying if you go by special exception and that is going to hinder us from doing business the way that we need to do it. But, I think also there could be as many people come up to you and say if you don’t require it by special exception then it takes out of the process of having...takes us out of the position of having a voice in the process. I think there is some emotional arguments that could be made on each side. I had to deal with that with the Mining Task Force a lot in the almost year that we met. The one issue that we keep coming up with was the issue of bus traffic and things like that. That sounds great saying that we don’t want mine trucks on the road at the same time we have buses on the road, but really that is an emotional argument because I don’t know that there is any cases out there where we actually point to where a mining truck has actually run into a school bus and killed kids. I think if you...we have got to be careful here. This amendment is about, in my opinion, finding the balance for Berkeley County. Some people say we have over reached here. That may be true. That is why I am not...that is why I am glad tonight I’m in my position and not in your position, cause I don’t have to vote.”

Committee Member Pinckney: “Yeah, ok”

Mr. Greenway: “You just need to find a balance and whatever that happens to be, hopefully it will work best for the citizens of Berkeley County and the industries that we have here in the County.”

Council Member Callanan: "Mr. Chairman?"

Chairman Farley: "Mr. Callanan"

Council Member Callanan: "Eric, can you go...just go over the process with the special exception for me? What avenues folks have after that...when it is something that heads in front of the BZA, generally it can be appealed. But, what I can't seem to understand, it seems like it is just subjective here, whereas we are making a decision and there is nothing other than having a voice for some residents and they are involved in the decision. Could that decision be appealed?"

Mr. Greenway: "Yes it could be appealed. We have an appeal to the BZA decision right now."

Council Member Callanan: "What are the qualifications for getting the special exception?"

Mr. Greenway: "In the amendment, you basically have to...it creates some findings that the Board has to reach before they approve a site or before they deny a site. Those findings are based upon the factual evidence presented by the applicant and are public during the public hearing. The BZA needs to determine number one, will private and surface water facilities and existing storm water drainage systems be negatively impact by the proposed use. Number two, is the proposed site access transportation route and operations located where existing residences may be negatively impact by the mine's activities and equipment operations. Number three, will pedestrian and vehicular transportation corridors and access be negatively impacted, such as if the road is substandard and it cannot handle all of the truck traffic. Do we really want to tear up a road that we don't have the money to fix to allow that type of heavy use? Particularly in a County situation."

Council Member Callanan: "The question that I have is with regards to negatively impact residences. It seems that it is very subjective determination that you have there where anyone can say anytime an additional truck passes my house, I'm negatively affected by it."

Mr. Greenway: "They have to present factual evidence that is a basis for that. One of the big things that you always hear with mines is that particularly in this area is if they dig this mine my well is going to run dry. Well, they need to present hydrology studies and things like that to show that is the case and not just say that."

Council Member Callanan: "But on the flip side of that, what sort of work does the mining operator have to go through prior to doing that? I look at it as if it is somewhat subjective in its process for determining whether they are going to get the special exception and it costs them, I don't know how much it would cost, tens of thousands, hundreds of thousands of dollars to get all of the pre-approvals from DHEC and do all of the site survey work, core samples, whatever. Then it goes in front of the process. Is it a situation where it simply...we

can't make that investment without having any confidence whatsoever that we are going to get this exception. So, essentially you have accomplished where we are in the beginning, where you can't get mining in Flex-1 because it makes it so cost prohibitive for the mining operator to get the pre-approval to end up with nothing that they are not going to do it anyway."

Mr. Greenway: "Yeah, and I understand that could be an argument that is put forth. I don't think that is going to be the case. Again, I am going to have several people that say that I am wrong on that and again, I am ok with that. I think a lot of these studies and a lot of things that they are going to have to do. My personal opinion is that 90% of the time, they are not going to have to do anything. It is just going to be a logical, just as Mr. Pinckney mentioned previously about the gentleman who wants to do this out in his district. He is not around anyone so no one is going to make that claim. If they do go into an area where they are right up against existing residences and things like that and someone makes that claim, then yeah, they are going to have to do that study and probably before we approve that kind of use or allow that kind of use, if they have to do that study, then that is probably a good thing because we have protected the citizens. But the citizens, in order to make that claim, they are also going to have to have some evidence to support that claim, so they are going to have to do the same thing."

Council Member Callanan: "I'll use the example of the dirt mine by me. It is probably the largest one in the region. There would be no Boeing if we couldn't get the soil from there. The Wando Welch Terminal wouldn't exist if we couldn't get the soil from there. Had that been put through the process that we are suggesting right now, would that have trouble getting passed? I didn't like it. I had to commute there, like I said, less than two miles from my house. I had to commute by it every day. There were obviously extra truck traffic there but the fact of the matter is, I also know the severely negative effects not having that mine there would have had on the local economy had we not been able to provide them...provide the area with the soil. Would that have trouble getting passed?"

Mr. Greenway: "That particular mine site may have, if it were in a Flex-1 zoning classification, may have trouble getting through the process, I don't know. Does anyone know for sure that it would have problems getting through? No they don't and that is why I think, you know our best approach here...we can all say that this going to cause problems or that is going to cause problems and this is going to be too expensive and things like that. My feeling with amendments like this is instead of speculating on those types of things, why don't we put something in place that we can all deal with. Then if there is a problem, let's deal with the problems once we know that those problems are. Right now, it is just all speculation as to what the problems are going to be or not going to be. The mine site down there on Clements Ferry Road, where it is with the businesses and industries around it, you know those residential areas moved in after that mine was started up. In that particular situation I think that person should have a right to continue operating their mine without any interference from the government. But where people want to go out and buy land in a Flex-1 zoning classification where people live and try to have quiet enjoyment of their property, then I think there should be a process to give them a voice. It may not be allowed depending on the area in the County they want to put type of mine."

Council Member Callanan: "Just one more question here. If someone applied for a special exception and the residents obviously.....you are not going to get anybody to a meeting other than the property owner to support it. Most of the time folks in government will tell you that the people who come to meetings are there usually in opposition of something that is going on. So obviously I think in any given case, you will probably get people in opposition. Without any of the evidence, whether that it is going to prove the test that it is going to affect their water quality, it is going to some sort of traffic survey or road survey determine that is going to be detrimental to the neighborhoods there. Without evidence like that and it is just essentially opinion telling them that we don't want this, is that enough to turn it down?"

Mr. Greenway: "No. Not based on the way this is written. The Board actually has to have factual evidence presented to them at the hearing that that is the case underneath the way this is written at this point."

Council Member Callanan: "It is almost in absence of any of that its....provided they do everything properly with zoning, they are going to get approved?"

Mr. Greenway: "If there is no factual evidence saying it is not compatible with the area presented at the BZA, then I think the BZA would be bound to approve the request absence of any factual evidence to the contrary."

Council Member Callanan: "Ok, thank you."

Committee Member Schurlknight: "Mr. Chairman?"

Chairman Farley: "Mr. Schurlknight"

Committee Member Schurlknight: "Eric, first thing I do want to say I appreciate everybody serving on that Task Force. I know it was a long drawn out affair and ya'll put a lot of time into it. Eric, I just want to back up a little bit about the Flex-1 and talking about to get the mining back in Flex-1 that we need to move this thing forward. Is that what you were saying?"

Mr. Greenway: "Well, I just wanted you all to be aware that mining is not allowed in Flex-1 right now so that anyone that wants to do it can't at this point."

Committee Member Schurlknight: "But, there are other vehicles besides this to get Flex-1 opened back up?"

Mr. Greenway: "There is a ton of avenues out there and a ton of remedies for dealing with this issue. Is this a perfect ordinance? No, I told the Mining Task Force all this time, look, we are not going to be able to write an ordinance that is going to address every situation, every circumstance, every piece of property in the County. We are going to have to do the best we can and then deal with the problems as they arise, if we get to that point."

Committee Member Schurlknight: "Right. The thing I've been hearing a lot on both sides of it and I've been trying to weed through it and see what is factual and see what is not factual. To kinda preface a little bit, I want to talk briefly about is that I'm all for property rights and less government. As I pull the mining regulations and more it is the state law of the legislators sent out to DHEC when they set this up. All of the stuff you are talking about DHEC has already doing this by their regs. Now, I will just quote a couple of things out of it. I'm confused why do we want to put another layer of government in this. In the law it says that the department shall deny an operating permit upon finding that the operation will have undue adverse affects on wildlife or fresh waters or marine fisheries. Some of the stuff we were just talking about. The operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public properties. And it goes on to talk about violating standards of air quality and ground water quality. To me and to be honest, I just got into it comparing and what I am seeing is that the stuff the Task Force is coming back with is pretty much mirroring what the State already has out there. I'm kinda tailcoating a little bit on what Councilman Callanan was talking about, the expense and everything else to go through and the time that these businesses are going to have to go through. As everybody knows, we have got a lot construction going on in Berkeley County. We need a lot of this material. People need to be aware that only certain few places in the County that suitable material to be used to get the compaction on this thing. We are all worried about traffic. But, I just don't want to see us putting our hands in something that is already regulated and if DHEC is doing a good job or not, holding a public hearing, to have the public hearings and all that for it. To me, I just don't see with the BZA coming into it to where DHEC couldn't handle through their public hearings and then if our taxpayers have a problem they need to talk with the senators or the house members on the State level. Can you address that?"

Mr. Greenway: "I can address both of those items. Number one with regards to the...to us duplicating DHEC requirements and things like that. That's great. I hope to a certain degree that we are duplicating their processes because if DHEC is requiring them to do that study anyway, then all they got to do is package it up in a folder and send it to me. Since they have already done the study for DHEC and we will put that and that will expedite the process for the BZA to be put on the agenda."

Committee Member Schurlknight: "Let me ask you this? If we are hoping that DHEC is doing this, they are going to package it and give it to us, why are we jumping through these hoops and making everybody jump through these hoops...."

Mr. Greenway: "We are not duplicating what DHEC is doing. All I am saying is that I don't want people to think that they have got to this several times to satisfy DHEC and Berkeley County. If DHEC is requiring it, then all we are saying is let us take a look at it as well. If the studies are already being done then would satisfy that requirement. The other item with regards to, you know, DHEC and I think they have lost a court case on this in the last few years, cannot through their public hearing, deny a permit application for land use based on what they say there. Those regs may still have that provision in there but I attended a DHEC hearing not long ago just after coming to Berkeley County and I heard the DHEC representative stand up and say, DHEC is looking at this from an environmental standpoint. We are not going to address this issue from

a zoning or land use standpoint. If you have those concerns then you need to take that up with your local jurisdiction through your local zoning regulations. That language may be in there but DHEC either does no longer do that or they can no longer do that because of a court case that I think that they did not prevail on for trying to deny a permit somewhere else in the state based on zoning and conditions from a land use standpoint.”

Committee Member Schurlknight: “You kinda lost me on that one a little bit. So what you are saying is if you go out, they’re not going to get in the middle of this if they are not zoned for that use?”

Mr. Greenway: “That is correct. I think you read something in there about the dwelling. I don’t remember the exact language now, but if there was a incompatible dwelling or something in the area and things, I don’t believe DHEC can rule on those particular items anymore as far as adjacent land uses are concern. I think it’s strictly environmental that have to deal on. DHEC does a good job with the environmental stuff. We are not trying to say DHEC is not doing a good job with that or at least I’m not. Again, this is about trying to create a voice for the citizens of the County to have a say so in what happens in their community as far as land use regulations are concerned and how their quality of life should be for their community. The property rights issue, you know, I am a believer of property rights as well. I have to say this quite often to our Planning Commission because you know, in my position as a Planner, it is often as a regulator, I often get charged with not being concerned about private property rights because of some of the things that we propose and all. But whenever private property rights cross one person’s private property rights and infringes upon another person’s private property rights then that is where the Planning and Zoning issues come into play. That is where you have to find the balance and we’ve got to find the balance with this particular amendment just like we do with our regulations so that everyone is equally protected.”

Committee Member Schurlknight: “Eric, let me ask you this? Of the things we’re talking about, what other regulations that we have on the books now or some things that we might can do to address these problems. I know we are talking about some of the setbacks and the traffic noise. I know we got a noise ordinance. What other alternatives can we look at?”

Mr. Greenway: “There is basically three other ordinances in the County that we’ve just clarified that this mine sites would have to comply with. The Mining Task Force is recommending that an alternative buffer yard be established for mine sites in certain cases, but they would have to short of having that exception, that exceptional situation, the mines would have to comply with the base buffer requirements just like any non-residential site would have to do. That is contained elsewhere in the Berkeley County Zoning Regulations. The Berkeley County Noise Ordinance would prevail. Whether we have this amendment or not, they are still going to have to comply with the noise regulations. And if the site is located within the MS4 area of the County, which is essentially that southern portion of the County, south of Moncks Corner, between the river and the swamp. You basically have to do the...meet the Stormwater Ordinance in the County as well. Those things again are written into here as clarifications so that people can’t say well, I went through this process but nobody told me I have to comply with the buffer regulations. Nobody told me that there was a noise ordinance out there that I would have

to comply with. Just like there are things that DHEC is going to regulate. That is in this ordinance as well. You know, it is just for clarification purposes. It's not trying to be burdensome to people. That was not the intent of the task force when they wrote it. It is certainly not the intent behind the staff recommendation and it is certainly not the intent behind the Planning Commission recommendation."

Committee Member Schurlknight: "Well, you know, the thing that concerns me is the scarce material across the County. Being able to mine it and it is very subjective to this thing. We have a lot of people coming out against it. You probably got one person there for it. I hate to think that we will lose mining in Berkeley County just because we need that resource here. If that happens and we have got to pull out of other counties, you are talking about a lot more truck traffic, more trucks traveling more miles of our roads coming in here to bring this material in. That is not even talking about the cost. It is going to drive it up on that. Mr. Chairman...."

Committee Member S. Davis: "I'd like to be heard before you close out. I'm waiting patiently, Mr. Chairman. I'd like to put in my two cents, Jack."

Committee Member Schurlknight: "Ok."

Chairman Farley: "Mr. Davis?"

Committee Member S. Davis: "I too, join with you on the property rights. I live in District 8 and I could live behind some gated community, but I intentionally live where I grew up. Having said that, I have a profound respect for communities. Not that I know folks live in gated communities. That is a great thing. My son is in a gated community in Charlotte. But I live out in the rural aspect and having said that, I do honor private property rights, but at the same time, I think Eric you've been doing a tremendous job arguing our position or the position I think in relationship to a balance. Jack, I hear you talking about DHEC but our new esteemed governor, Nicki Haley replaced the whole DHEC Board. I would have to think that we need to be dictated or be subjected to some folks who don't have no ties specifically to the local communities. This is one aspect I think the Mining Task has put in place that you have some community input and the interesting thing about this is as I listen to you Tim, it is no different that what we do with everyday zoning now in reference to whether we allow certain activity to occur in an area that we have already zoned. I mean, when we go through that process and I think what the Mining Task put forth before us after they have engaged themselves in a whole year of give and take and the staff have engaged themselves, they have put forth a process that we need to give an opportunity to breathe and operate. I want you to think about this Jack, is that we have expanded this material that you are talking about. If I listen to Eric correctly, right now, there is no provision in Flex-1. In one sense, we have even expanded your concern in reference to this material that is so vital to our local economy. We have expanded it, I mean, in Flex-1 in a sense, because if we don't have these amendments apparently, I'm correct on that Eric?"

Mr. Greenway: "You are correct. This proposed amendment also opens up one additional zoning district to mining where mining has never been allowed before and it drops

some conditions out of the heavy industrial zoning classification, so with regards to the special exception process, the overall amendment is little more flexible and more lenient.”

Committee Member S. Davis: “Some of the aspect of it here about foreseeability, well you know, foreseeability is those things may or may not occur, but we can’t basically just destroy this whole process and I’m really hoping that this Committee would actively put politics aside for a minute and really think for a moment. I think there has been a tremendous job in relationship to some of the criteria that they have put into place to special exceptions. Is it subjective? I don’t think necessarily. I think there has to be some objective findings to support their subjective complaint, if that makes sense. I think is what Eric was telling us is that it may start off subjective, but there has got be some objective findings. Something that you can actually put your hand on to facilitate the denial for the plan operation. Now, Berkeley County is fast growing county, no question about that. It is one of those counties that really has two aspects. I think Pinckney and I being somewhat in District 7 and District 8, you know we still have a lot of the characters of the rural aspects of Berkeley County. I think the folks that live in those communities want to try to protect that as much as they can. But at the same time, I think that individuals in those respective communities reflects what in certain instance where Flex-1 probably could go forward. I think it could go forward just like in our everyday zoning laws that we have now. It’s not every instance we have to actually engage ourselves. These things operate separate and apart from us the majority of the time. Every now and then something comes up that we really have to entertain and get involved and really make a determined decision. But the majority of the time we put the apparatus in place that actually solves the problem. I think the Planning Commission has done a wonderful job to put the apparatus in place. Really we just need as County Council to give it an opportunity to operate and if we need to tweak it and do certain things, well I think this Council can do that. But please, let’s not supplant a years’ worth of effort when we send them out there in this, Jack....”

Committee Member Schurlknight: “Steve”

Committee Member S. Davis: “We send them out there.....”

Committee Member Schurlknight: “Are you finished yet?”

Committee Member S. Davis: “I just hope I can get reason on this...”

Committee Member Schurlknight: “Me too.”

Committee Member S. Davis: “Ok, thank you.”

Committee Member Schurlknight: “Mr. Chairman?”

Chairman Farley: “Mr. Schurlknight”

Committee Member Schurlknight: “I’ve just got a couple of things I want my astute colleague to my left over here, Mr. Davis. I just want to clarify a few things. First thing is I’m

not trying to kill it. That is the first thing. Second thing I am just trying to get some answers to make a good decision on this thing. One of the things that I see kinda disturbing in that ordinance, you are giving them what time they can open, what time they can close. That's disturbing to me. You know, eight thirty in the morning. Eight thirty in the morning half the day is gone. You know, there are things like that that we got to look at. We got to look at it real close on that."

Mr. Greenway: "I think that is seven thirty."

Committee Member S. Davis: "Seven thirty, Jack"

Committee Member Schurlknight: "Seven thirty, eight thirty is probably about the same when you got construction going on. I could tell you that if an attorney gets to work at ten, those people that have got to work seven thirty, you know, we rolling. But anyway, that's the things like that we need to look at and Mr. Chairman, if comments are kinda winding down, what I would like, I know time is getting short. If we have a couple of people out here that would speak to and against, I would like to hear something from them to help me make a decision. You know, like three minutes a piece, two from each side. The ones that don't get to speak if you want to we could in the next meeting."

Chairman Farley: "Ok, we can do that. Mr. Greenway would like to say something right now."

Mr. Greenway: "Just before I relinquish the podium to the body behind me or the people behind me, I just want to say that the Task Force, they were a diverse group with a lot of strong opinions. They were led by Mark Carter who chaired that Task Force. He is to be commended in my opinion for the effort that he put forth to manage that process throughout the year. He and I think, his assistant, put forth a lot of work privately on this particular item as well. I just want to say to the Task Force that I enjoyed working with them for the year and I particularly enjoyed working with Mr. Carter and getting to know him as the Chair. He did a stellar job in managing that process and it was an honor to serve with him on that Committee."

Chairman Farley: "Eric, there's a couple more questions. Mr. Call?"

Council Member Call: "Mr. Greenway, you said that Flex-1 would now be added to the area in which mining will be allowed. The other was...."

Mr. Greenway: "Light Industrial. Light Industrial currently does not allow mining. Mining would be allowed in Light Industrial zoning classification as a conditional use. Yes sir."

Council Member Call: "This MS4?"

Mr. Greenway: "Most of Light Industrial would be in the MS4 area. The MS4 is a stormwater requirement area for the County. That is not an actual zoning classification. The only other zoning district mining is allowed as a conditional use is Heavy Industrial. If you look

at your screen there just real quickly, currently mining is allowed as a conditional use but you have to have twenty acres in order to do that. There are operating hours established in the current zoning code of six thirty to six thirty for heavy industrial. And you have to restore the ground surface for a future permitted use in heavy industrial. All of those conditional uses would alleviate that particular twenty acre requirement down to zero and drop the time frames for mining. There would be no hours of operation for mining in heavy industrial. Again, there are things in this ordinance that I don't want to paint the picture that it is an over regulating document. A lot of things that we currently regulate if this amendment is adopted would be allowed and dropped from the current regulations as well."

Council Member Call: "Ok, let me ask two or three just quick questions. What would happen if we allowed mining in these other zoning areas, classifications, and defer them to the DHEC requirements and administration to supervise the permitting?"

Mr. Greenway: "As far as if we allowed DHEC to regulate it in Flex-1? Nothing may happen. I can't stand up here again, that was just speculation on my part. I think you are going to find yourself in a few years if not sooner, with a situation that caused the Council back in April 2009 to take the borrow pit definition out of Flex-1. You are going to have somebody propose a mine site in an area where the community does not want it and they have concerns about it. DHEC would not have an opportunity to say that that mine cannot go there. Now, again, I don't want to argue, open up that argument about the mine site that brought all of this about in April 2009. That's a decision that's been dealt with by the BZA and will continue to be dealt with but, you know, the thing that I would point out to you is that DHEC cannot say just because of compatibility situation on land use that the mine is not compatible with the community. They have to make that determination based on some environmental or wildlife issue that Mr. Schuriknight read earlier. So, if there are compatibility concerns or character concerns and things like that the community raises, no one is going to be able to deal with them if you allow it just to be in the hands of DHEC in Flex-1. Is that going to be ok? It may. It might not. I can't answer that."

Council Member Call: "The next question and Mr. Callanan kind of touched on this. You know, we were all very happy when we passed this one percent sales tax transportation bond and if the cost of the fill material and this is not just what you can dig up out of the ground. It's got to meet certain engineering specifications which I'm sure you're more familiar with than I am. We were all very happy when Boeing decided to come here and that dirt under that Boeing plant had to go by...through Mr. Callanan's district, I guess. So, progress....we don't want to stop progress. And one of the things that concerns me about was in this amendment is that you've got a time limit of twelve months and two extensions of a maximum of six months, which I think is..both are too short. But on the other hand, you are trying to hurry up the mine and hold down complaints about the trucks on the roads at the same time. How do you do that without stripping gears?"

Mr. Greenway: "Yeah, in order to explain that, that is going to take me some time, ok? That is a part of the process that is allowed as a conditional use. Basically, in order to be a conditional use, you have got to be five acres or less and less than twenty feet deep. Well, if you

are five acres or less and less than twenty feet deep, we are not going to be concerned about truck traffic. We are not going to be concerned about those things. This would allow the farmer out there or someone out there that owns Flex-1 property and says look, I want to build a pond or I want to build a lake for my farm or whatever and in the process of doing that I want to sell the dirt. So, the County, this ordinance creates the provision to do that. They get twelve months to operate. If they are full bore, you know, they could do that. They probably cannot dig out and the mining representatives pointed this out and by the way, those folks are some of the most knowledgeable people that I have ever dealt with on these particular issues.”

Council Member Call: “They would almost have to have that dirt sold for a five acre tract to get it out of there in twelve months. Before they start.”

Mr. Greenway: “That’s right. That’s why the recommendation or the request of one of the mining industry folks who know how much dirt can haul and how quickly they can haul. The Task Force went back in and said ok Eric, come up with some language that allows them an extension to operate longer. So, if someone’s out there and they are operating in compliance with the noise regulations, they’ve got their buffers installed and they are maintaining their site appropriately and things like that. Then the administrative officer, which you know, officially is my position, can grant two extensions up to six months each. So it gives them a total of two years. According to the folks that came up with that, two years is adequate to be able to haul that dirt on a five acre site. It comes with a condition, the operator has to operate his site cleanly and be in compliance. Now, the question came up, ok Eric, let’s say somebody gets out there and they violate the noise ordinance one day. Things happen. You know, it’s going to happen. Nobody, very few people set out to intentionally violate rules and regulations. They get a job. They want to start making that money. They start hauling and things like that. If I go out there and say, look, you are in violation of the noise ordinance and they comply with the ordinance and pull back and they don’t violate it again or they don’t do it again for several months, then that doesn’t take the extension out of play. But if I am constantly having to go out there and they are constantly causing a problem for the community, I don’t know if we really want to have that site operating any longer than twelve months.”

Council Member Call: “So what if it were to lay idle for two years? Can they come back.....”

Mr. Greenway: “It lay idle for two years? You know, if they came back into me and said, hey, it is still five acres and less than twenty feet deep. We haven’t done anything out there in two years. We want to finish digging the five acres, then you know, I don’t think there is anything in the ordinance that would preclude me granting that approval.”

Council Member Call: “Basically, the same process.”

Mr. Greenway: “Yes, it would be the same process.”

Council Member Call: “Ok, now....”

Mr. Greenway: "Now, if the site is five acres or greater, they have to go through the special exception process. That is where the truck traffic and all that comes into play."

Council Member Call: "We need the public to understand that those roads are public roads and trucks have a right to use them. And that they pay thousands of dollars per vehicle, per year to operate on those roads. They make their money operating on those roads and they pay dearly for that right. So, the public needs to understand that those are public roads and that those trucks are paying to be there."

Mr. Greenway: "Yea, and I don't disagree with that."

Council Member Call: "I'm still concerned about the short term and the short extensions. I would like, before I can vote for it, see you do something with that. And another thing is I would like to see objective objections from the Zoning Board, Board of Appeals. I would like to see a list of what, a written list from them when they make a decision one way or the other. Whether they turn it down or whether they approve it, their reasons. And I would like to see those reasons listed in here for them to hang their hat on and tell us this is why we did it. We didn't do it because the guy down the street just didn't like it. We did it because somebody presented some geological evidence, some borings as Mr. Callanan, that the water table was going to be affected or you know, something like that. When this comes to a public hearing and this room is filled up with 150 people opposed to it and you got one guy that wants to dig the dirt out of his mine and he has every right to do it under the ordinance, that any of those 150 people need to have a better reason than they just don't like it."

Chairman Farley: "Mr. Call, you are wanting the Board of Zoning Appeals to have a criteria list?"

Council Member Call: "Exactly, somewhat like the Planning Commission. I was on the Planning Commission many years ago and we had particular reasons that we could and could not change the Planning Commission or the Planning and Zoning ordinances. And that seemed to work well. You couldn't come in there and say well, it's a financial hardship was a reason that we could not grant a variance. But, for topography or things like that, we would hang our hat on that and we could give that as a reason. That is what I would like to see come out of this. Can you do that?"

Mr. Greenway: "They have findings of facts that they have to fill out on every type of item that they have to deal with. If it is a variance, there are a certain set of findings that they have to reach underneath the state law. They would have to the same thing in this particular case. I spend a great deal of my time dealing with the BZA on the findings of facts for situations. Sometimes those findings of fact are very simple. Sometimes they are very complicated. In the case of an administrative appeal where someone appeals my decision to the BZA saying that I have made an error in my interpretation. Those findings of facts can get very complicated and get very tedious and we have to bring in the legal counsels to help draft those for the BZA. That does exist and we will do that."

Council Member Call: "I'll try to hurry this up because I know Mr. Farley wants to move along, but we had a recent court case and this is why it's really important to me that we have findings of fact, because we had a recent court case where the County, I think we lost, no we did not, but the point is, the judge considered the Board of Zoning Appeals to have the same status, the same importance as a jury. He said it was a jury to him and he was not going to change their findings of fact. He would apply the law but he would not change the Board of Zoning Appeals. That is a pretty...to me that is a pretty heavy responsibility that Board of Appeals to come up with good reasons or we are going to get slapped down like that again. We need to be on firm ground when we do get these appeals. I don't know if you want to respond to that, but I will wrap it up and ask you another question and you can respond all at once. Perhaps the attorney can help us with this. Do we have the authority to go farther than DHEC has under state law?"

Mr. Greenway: "We discussed this...we discussed this today and we can...we cannot do anything to permit something that DHEC does not allow. But, it is my understanding that from our legal counsel that the Council can pass regulations from a land use standpoint to regulate the mining as a use of property and what standards we choose to place with that would not violate anything in the state law."

Committee Member S. Davis: "I want to help my good friend, Bob. Bob, in reference to majority of administrative hearings that are held in the state of South Carolina, the burden is a substantial factual basis. Substantial factual basis. I just bring that in lieu of what you talk about as they act as if a jury. So that is what the judge is looking for. Is there a substantial factual basis for the decision that the ruling body can actually put their hand on. It happens in every case. The majority of administrative hearings have substantial factual basis. If there is not a substantial factual basis then it needs to be overturned. So, I hear you, but we cannot in every instance try to proof this thing before it actually occurs. Everything has to happen to some extent on a case by case analysis or basis. We got to let come in operation. That's what I think we need to do. I think it will work itself out, Bob. I really think it will, ok?"

Committee Member Call: "Mr. Davis, one more time. No, I think I understand what Mr. Davis is saying. Thank you, Mr. Chairman."

Chairman Farley: "Ok. Jack, you said you would like to have a couple of the for and against...."

Committee Member Schurlknight: "If you would give that consideration. Just three minutes a piece. I would just like to hear a little bit."

Chairman Farley: "The ones are for the mining, if you, say a couple of you to come forward and limit your talk to three minutes. Is that possible?"

(Inaudible)

Chairman Farley: "Ok, Mr. Southard is the Chairman of the Planning Commission and he will give us...."

Committee Member Schurilknight: "Mr. Chairman, let me clarify. It's not really for or against. It's just opinions. Opinions on both sides of the issue. I was looking for opinions."

Mr. Eddie Southard, Chairman, Planning Commission: "I don't think I should give an opinion if that is ok. I think Mr. Carter....and this is a very important issue."

Chairman Farley: "Give us your name and address just for the record."

Mr. Southard: "I'm Eddie Southard. I'm Chairman of the Planning Commission. I live here in Moncks Corner. The concerns ya'll had was the same concerns the Task Force had for the twelve months. Everything ya'll have brought up has been brought up by them over and over. And I would like for them to stand up at this time, just for a second, if you would. I think all of them are here but maybe one person. You can see how concerned they were with the issue, because all of them are here tonight. I appreciate it. Mr. Carter is the Chairman. Hope you have the opportunity to say a couple of things also. I would like to say too, that none of these people are satisfied. Including myself. I wasn't satisfied with none of these people."

Committee Member S. Davis: "Sounds like Congress."

Mr. Southard: "I heard somebody say one time, that is a good point. It is a good sign if no one was satisfied. Just a couple of things I want to say. The issue ya'll was talking about, the Flex-1 earlier? Prior to April 2009, you have to understand that the mining was allowed in Flex-1 property. I think that was a point that you was....up until April 2009, whether it was right or wrong, it was allowed. The only other point is to make sure that it is a very important issue and it is going to affect a lot of people. However much time ya'll feel like you need to take, I feel like you need to take it because it is very important."

Chairman Farley: "Thank you. Mr. Carter, would you like to address us please? Mr. Mark Carter?"

Mr. Mark Carter, Chairman, Mining Task Force: "I hadn't planned on addressing you but I've kinda been forced into action. Some of you may know me from my Planning Commission days. I will say to ya'll, this was a very sensitive subject, as Mr. Pinckney started out. So I carried that sensitivity from dealing with issues that affect the community from my Planning Commission days into this. I also have worked in the civil projects industry. I am a Civil Engineer. So I have worked in this industry over 24 years. I tried to bring that to this issue and I will say to you just like Eddie says, I don't agree with all of it. We worked hard at it as a task force and there were many times when Eric and I agreed to disagree. There was a lot of debate on the task force. A lot of the same issues that ya'll are dealing with here and many, many more. I think I need to say with my Chairman and Task Force hat on, I support the recommendation that came out of the Planning Commission and came out of our Task Force. If I take that hat off for a while and use my experience from the Planning Commission and from working on civil projects for the time that I did, I think that what you have before you can be tempered to make it slightly more business positive and accomplish what we need to protect the citizens but also not

apply this additional burden and uncertainty to the process that we have in what's currently drafted. It is a sensitive subject. I will point out to you that DHEC process and ya'll talked a little bit about this. What you have before you here says you can and can't do it in certain circumstances. The DHEC process is slightly different in that they are not going to tell you can't do it and that is in the law for a reason. They are going to say that if you do it, here's how you have to do it. And there is a distinct distinction between saying you cannot do this on your property and saying yes you can do it, but you have to comply with these rules. At the end of the day, it is subjective. And you hit the nail on the head. I just think you have to strike that balance with the sensitivity issue. A balance in the community plus not being overly burdensome to the mining industry. And when I say make a little more pro-business, I'm not saying pro-business just for the sake of the mining industry. I want to be clear on that. When I say pro-business, I mean pro-business in a pure business sense so that Mr. Call point out, so when we build houses and we build roads and use fill dirt around pools and everything that we do in our daily lives in moving forward, that it doesn't cost a arm and a leg to do that. That pretty much summarizes my thoughts on it. Again, it was a pleasure to serve with the other folks on the Task Force and I will be happy to answer any questions, if you have any for me."

Chairman Farley: "Anyone would like to ask Mr. Carter any questions?"

Council Member Callanan: "Mr. Chairman?"

Chairman Farley: "Mr. Callanan"

Council Member Callanan: "On this DHEC issue, if DHEC says alright you can do it but here is how you need to do it? Is there a way that we can just make that so that the DHEC regulations satisfy the environmental requirements in statute or ordinance so that they are not doing everything twice and they are not saying well, DHEC has this requirement and we have this requirement. They are slightly different. That is one thing that I think would make sense, is that if you take all of the environmental issues and just say if DHEC approves, not approves it, but if they say you can do it in this way, then that would be acceptable to the County on the environmental side. Now, on the zoning side, on the Planning side, that would be where we would step in. I just don't want us to get into the...I think it is laborious. I think it duplication of processes that we get involved in that environmental issues. If we let DHEC handle it the way they have, somewhere in the ordinance it says that we just...that has to be submitted to us, then I think I might take a lot of the work...you know, make it a little easier for these industries to operate. The issue is taking the uncertainty and you hit it on the head when you said my biggest issue here is the uncertainty of it. If I'm a mining operator, it is easier to say if I meet X, Y and Z standards, I can operate. But to say, all right, I meet X, Y, and Z standards. I spent all of this money. I have my DHEC approvals. Fifty people show up versus five at a meeting and that sways opinion. That is the point I'm trying to get around. I don't think anyone really wants to box out the property owners. But we just want to make it something a little more cut and dry and less subjective. Does that kinda make any sense to you? I wasn't on the committee so I don't know whether that was discussed or not."

Mr. Carter: "We debated specifically whether to come up with an ordinance, to bring back an ordinance to you that was subjective or one that had clear and cut rules to comply with. The majority of that task force thought it better to do the subjective. But back to your point about the DHEC..."

Council Member Callanan: "Can I ask one question on that? Was any one that voted that in...because there were mining industry folks there, any one that voted for it to be subjective versus objective? Did anyone in the mining industry side support that?"

Mr. Carter: "Based on my memory, nobody on the mining industry side supported it being subjective. I will point out to you and bring up an interesting point. As a mining industry representative on the Task Force, I didn't vote. So when you look at the two Mining Task Force votes, I would point out to you that that doesn't necessarily mean that the other mining industry representative voted in favor of it. I didn't have a vote as Chairman."

Council Member Callanan: "Thank you."

Ms. Nicole Ewing, County Attorney: "Mr. Chairman? If I could address something Mr. Callanan said. I respectfully disagree with Mr. Carter. The criteria that is listed is not subjective. It is actually objective. It can be worded a little bit differently and I've been talking to Eric about tightening up the wording. But there is definitely an objective criteria that as far as the Flex-1 and the special exception, there is definitely a criteria that the BZA will have to find in order to allow it. Now, that being said, we can tell the BZA what they are required to do, but we cannot control them. We run into this issue on variances where they have a very objective criteria that they often meet but sometimes do not. But as the ordinance stands from a legal perspective, are objective. They just maybe need to be worded a little bit tighter and I will work with Eric on doing that."

Chairman Farley: "Any more questions for Mr. Carter? (No Response) Thank you so much, Mark."

Committee Member Schurlknight: "Thank you Mark."

Chairman Farley: "Who would like to speak? Mr. Hand?"

Mr. David Hand: "My name is David Hand. I am a resident here in Berkeley County. I'm also one of the principles with O.L. Construction Company. We do have several mine sites throughout the tri-county area, so I was a mine member, Task Force member. So I have that kind of point of view going through. A couple of things that...and I appreciate you guys taking time and you are really taking this seriously and I certainly appreciate that. To walk through a couple of issues that I have. The special exception, that really on paper sounds like a great thing to do. The reality is it really does not give the result that it looks like on paper as everybody has said. Not to belabor that point. A few vocal minority or whatever or people against that can certainly sway opinion. I also don't feel that the criteria is very objective. There is a vast amount of money and upfront costs that are spent by the industries depending on what kind of

mining that you are doing that is done to be at the end of the day to be decided by something that we really feel is arbitrary. And that is just from reality. I mean we have something that we have been trying to put together for, it may be, I lose track, it may be five years now. Actually, I think that is probably what started this whole thing. Maybe should have backed up and thought about that. I don't support the special exception. I think that we could do a conditional exception. We could have some public input. I'm not against that. But there needs to be some kind of criteria that is measured against. A lot of things have been said about the wording. That is has to be factual. It has to be...from that, my reading of that...I just can't get up and lie about something. It can still be a personal thing that I don't like something. I would like to see that change. The mine life of the one year with the exception, that was my request to have that overturned. I just don't think one year on a five acres or so, especially in this economy, will really...I don't think you can move that fast. I guess the compromise that came out of it was with the extension. The hours of operation. Our guys are at work there at 7:00. They need materials to work with. If the mines can't open until 7:30, we are standing around waiting on that to happen. That is just totally out of sync with the industry as a whole. The special exception to that I have to do is...it's been said that is just a way of helping with zoning. There are only two things in Berkeley County that will be done with special exception. That will be mining and adult entertainment. Not that I stick us in that category with that, but most everything else is done some way of giving a cut and dried methodology of saying what you can do, what you can't do. I don't think the mining industry or any other business or whatever should run rough shod over the County at all. There needs to be some regulations in there. DHEC provides some. I think the County can provide some guidance. I just don't necessarily know that special exception is the way to do that. My personal opinion on that with special exception, mining will go away in Berkeley County. You won't get one the way this is written right now. That's my opinion. It's just what is going to happen. Just because of the vocal nature of what this is. The unintended consequences of that is all of that material is going to come from somewhere. The County is going to continue to grow. It is going to be more expensive and things change. Fuel goes up so it becomes more expensive. We can't control that but the issue is you are going to through a lot of trucks on the infrastructure of this County. There is also a couple of pits that are currently active in Berkeley County. We happen to own a couple of them. So from a personal standpoint, I'd like to see ya'll outlaw mining. I will be one of the only ones that have one. Guess what I can do? That is a great thing for me personally for our company. That is not right within the County either. Essentially, you are forming some monopolies and you are also forming where only a few select large land owners can afford to do this and can afford to put the upfront money in and generate the income from this. One other thing on the income and the classification has been that the miners, we move in and buy some land and then we are the carpetbaggers coming in. I would say half or more of the time, mining operations either start or are currently operating. We do that for a land owner. There is a split cost. We pay them a royalty fee to come in. Most of the time those people have owned that land for a long time. They owned that land way before the neighborhood. In some cases it is not. The neighbors have been there for a long time. But there is a bit of a misconception that the miners are moving in and disrupting the neighborhood. One more thing in Flex-1, sorry to kind of ramble on this, there is a lot of things wrong with this. In Flex-1, it specifically addresses agricultural issues but there is a disclaimer in there for nuisances, dust, traffic, pesticides. There is a whole big thing. If you live in Flex-1, be prepared to put up with some inconveniences. A lot of the pro side of it, I hate to classify it like that. The

mining, the people that would like to eliminate some of the mining keep using quality of life and all that. I agree with that. I don't think that we need to rape and pillage the land, but in Flex-1 there is huge disclaimer for just the things that they are trying to regulate out this. Those are agricultural. This is mining. We say that is a little apples and oranges. But essentially Flex-1 does have some issues with that. The other thing too, our company depends on these pits. We haul the dirt to Boeing. We hauled the dirt to Google. We hauled the dirt to Mikasa. We hauled the dirt to Daniel Island. I have a hundred people that work for me that live in Berkeley County. Almost half of the people that we do. We've got 20 employees that are currently working in mines at our little company that are there. If we cannot mine, those people will be unemployed. I'm the one that has got to tell them, guess what? I can't do this. That is a reality of what will happen. It can be argued that this won't chase mining out. It will chase mining out of the County."

Chairman Farley: "Thank you, Mr. Hand."

Committee Member Pinckney: "Mr. Chairman, I've got a question for Mr. Hand. I just want to make sure that I understand what you are saying. Are you saying that if this amendment goes forward without any tweaking that it would outlaw mining?"

Mr. Hand: "In all intents and purposes, yes sir, I believe it would."

Committee Member Pinckney: "You believe it would."

Mr. Hand: "Yes sir. That is my opinion."

Committee Member Pinckney: "That is your opinion. With your expertise, you don't think that if we would come collectively together and tweak it as we needs to be that we could as citizens, we could cohabit in Berkeley County."

Mr. Hand: "We do. We cohabit like I said...."

Committee Member Pinckney: "Continue to do so. Continue to do so."

Mr. Hand: "We do. I think that it is and there in lies the rub. Where do we get together? If this is the point where we get together, we are not there. If we could tweak this, work this out, I think that would be fine. We spent a year trying to do it and we were almost divided right down the middle after a year of very great discourse, civil conversation back and forth between the groups. It is just a very difficult and contentious situation."

Committee Member Pinckney: "And it is and I concur with you because here again, I've experienced some things in the rural area when it comes to a different kind of mining, but mining to me when you have been disruptive, it carries a special connotation. Also, knowing the importance of what we are discussing here tonight, I think with us being the intelligent beings that we are, we can send a man to the moon and do all those other things, we must be can work out how to get some dirt out of a community."

Mr. Hand: "I would think so."

Council Member Call: "Mr. Chairman?"

Chairman Farley: "Hold on just a second, Mr. Call."

Council Member Call: "Mr. Hand, would you be open to giving us a list of detailing your objections to this ordinance and why you think it would it close down mining in Berkeley County? Would you give us a written statement to that effect for our consideration?"

Mr. Hand: "Yes sir, I can. I actually have one that we've kinda put together so I can do that fairly easy."

Council Member Call: "Would you put it together for us and if you will send it to Ms. Austin and she will see that we get it. How about the hours of operation? Eleven hours a day and I don't want to get into too much detail here because this a really detailed thing, but this one you did mention. 7:30 to 6:30. That is eleven hours. Is that a long enough day for your operations? I know there are exceptions where night work is required. Your normal operations, 7:30 to 6:30. Would that work with your people out in the field using this material? And before you answer that, here's is where I am going. If you say you start at 7:00 in the morning, why couldn't you use the last thirty minutes of the day before to stock pile what you need between 7 and 7:30 the next morning?"

Mr. Hand: "It was discussed in there that this actually this timing is actually the gate opening. Technically, I can be inside the mine site working, stock piling material outside of those hours and it was mainly I think the time was put out, when will the trucks be on the road is the issue. And then from our...the construction industry as a whole, the people are at the jobsite at 7 waiting on whatever it is that they need for the day. So that's kinda why the trucks start early. They are there at 6 so the material can get to the site at 7, but that is just an industry standard."

Chairman Farley: "It was brought up during that they did not want the trucks stock piled on the road or anything like that. They could not unlock the gate until 7:30, correct?"

Mr. Hand: "And that is correct. It was mainly just a truck traffic issue."

Council Member Call: "I mean stock piled on the construction site where it needs to go to."

Chairman Farley: "No, I'm talking about the trucks parking on the road waiting to get into the site. They did not want that. They could not arrive before 7:30 in the morning to go onto the site to get the dirt."

Council Member Call: "My question was, can they do it the day before so they can operate at 7:00 when they go to work. That's a small item. I visited a dirt site and I'm going to ask you if your company has this policy. It was not one of your mines, but I just wanted to see. I saw a truck filled with dirt. He pulled off away from the excavator. He got out of his truck with a shovel. He wiped all of the dirt off the edges of the dump. He covered his load which is required by law and then he went around and cleaned the dirt from between the wheels of the tandem wheels. Does your company have that same practice and effect to keep as much dirt off the roads as possible?"

Mr. Hand: "The quick answer is yes sir. There is some DHEC requirements for construction entrances. Normally, and I have to remember that all companies don't run like we do. We think we run a tight ship and just because I do it does not mean that everybody would. Normally, we pave the entrances. As a matter of fact, the Clements Ferry as bad as that gets, we've put in a \$80,000 truck washing station. The trucks have to as they are driving and they have stuff, they have to drive through that facility to actually do it. I think that we are the only ones with one of those. It's only on one operation and that was mainly for the Boeing. The roads still got dirty, I mean believe me, the SCDOT will not hesitate to give us a call if something is happening and we need to straighten something up or clean something up."

Council Member Call: "The reason I ask that question is we, I say we, the Berkeley County Water and Sanitation Authority has a tractor with a brush on it and they go out there and clean off the road. I don't know how often they do it, but where the trucks come in and out of the landfill. I wonder if there is an effort made to try to help the neighborhood keep the roads clean."

Mr. Hand: "Yes sir, we have those with the broom and self-contained...."

Chairman Farley: "Mr. Call, I pass by Clements Ferry Road probably six or eight weeks ago and Mr. Thompson himself, was driving that Ford tractor with that brush on the front of it on a Sunday afternoon."

Mr. Hand: "That may be a bit of therapy for him as well."

Chairman Farley: "It could have been, but I thought....I know that guy."

Council Member Call: "Thank you so much.."

Committee Member S. Davis: "I've got a question for Mr. Hand. You know, it is kind of hard to argue with a guy who this is your expertise. You tell us in your opinion, this is going to be the end of mining. That's kinda hard as a County Council member as a group, to kinda digest in a sense. If the guy tells me that there are going to be no more trips to New York. My God, are you the only one flying the plane. People tend to get panicky in that regard. I don't have a reason to suggest that you are not telling...being candid, but the bottom line that we do know that you have a tremendous interest in this matter. To all my members on the Land Use Committee here, you know, we probably shouldn't put together this Task Force. We should

have got into the trenches instead of having these fine citizens wasted their apparent time. Because if we are going to come up here and relitigate the matter and then inject our positions after there has been a lot of through discussion. I think the folks have come with the intention that neither side is basically happy with what transpired. Now, if we want to tilt the scale in a manner that this totally destroys the compromise that has been brought before us, then we should have done that from the forefront. We should not have wasted our time and allow you fine citizens to utilize your time and effort. We as County Council members should have been down in the trenches making these amendments instead of now from the standpoint in which we stand. I commend each member that was on the Task Force and yourself included. That probably was a very interesting position and role that you played. But I want to remind this County Council Chairman that the Committee...we knew it was difficult when we sent ya'll out. That your returned has not lessened the difficulty that has resolved and I just hope that we try to continue to protect or to implement the compromise. If you reach a point, Mr. Hand, that you destroy mining in Berkeley County, I'll donate all of the land I got for ya'll to dig all the dirt you want. I promise you, Ok?"

Mr. Hand: "I may take you up on that. Thank you though."

Committee Member Schurlknight: "Mr. Chairman?"

Council Member Call: "Mr. Davis, I will submit that we could not have done this good of a job or would not have done this good of a job."

Committee Member Schurlknight: "Mr. Chairman?"

Chairman Farley: "Mr. Schurlknight"

Committee Member Schurlknight: "Just very briefly. I know we are getting strung out on this thing, but Councilman Davis, I do take exception to you trying to say that I am wasting this Task Force's time. It was not a waste. We've got good feedback. We got feedback that we can look at. I think that we are at a point now, it's coming up with a compromise. Just seeing if we can get a win-win situation on that."

Committee Member S. Davis: "That's what I want, Jack, a win-win situation."

Committee Member Schurlknight: "You say that we are wasting their time. We should have been in the trenches. We are in the trenches right now and we've got to look at these opinions. Now, I have constituents. Most of my District 6 is rural area in Flex-1. I have constituents that have concerns on both sides of the issues. I'm going to work through this thing and get information from both sides of it. So, I'm not wasting anybody's time. Thank you."

Committee Member S. Davis: "No, I didn't mean to imply that you waste time, Jack. What I'm trying to say is that, you know that it is pretty easy once you get a final product. A final product. The cake has been baked to some extent. Some ingredients need to be altered, but that built different. And so, when we totally want to inject changes, you know, if I was sitting at

the thing, why don't you just have sunrise to sunset? All the issue ya'll talk about 7:30...I don't know if you can mine in the dark or not? Sunrise to sunset and move on."

Committee Member Schurlknight: "Steve, as you told me in just mentioning cake and I read through this thing, you know like the old saying goes, you can't have your cake and eat it too. Now, we're....you have got to keep the economic engine going. We've got have materials. And we have got to get a compromise. And I agree to a certain extent the way this is and public opinion. I don't know how much bearing it would have on the BZA making an opinion, whether you can mine or not. It just concerns me that we are going to have to go out of the County to buy fill dirt."

Committee Member S. Davis: "Jack, what I'm trying to say we really...what I'm really hitting at is when Mr. Hand coming forth and saying well if you got the special exception, you know, my God, that alleviates all mining in the County. That's saying a lot."

Committee Member Schurlknight: "Well, I think we need to look at it from all different angles. Whatever time it takes to do it. I don't think we need to rush into it. We may need to make a solid recommendation, Councilman."

Committee Member Pinckney: "Mr. Chairman?"

Chairman Farley: "Mr. Pinckney"

Committee Member Pinckney: "You know, here again, due to the seriousness of this and how crucial it is not only to the mining industry but to the citizens of Berkeley County as a whole. I initially had some concerns about holding it and taking a further look at it, but I'm going to make a recommendation that we hold it and further evaluate it. At the same time, hopefully, we will come up with the right decision on this."

Committee Member Schurlknight: "Second"

Ms. Ewing: "Mr. Chairman? In the interest of fairness and due process, we probably need to hear...."

Committee Member Pinckney: "I'm sorry. I jumped ahead of myself. Yeah, we could still do that."

Chairman Farley: "Thank you sir. Ms. Hoover, would you like to come up and say a few words? You were on the Task Force?"

Committee Member Pinckney: "And I do apologize, Ms. Hoover."

Council Member Call: "While she is coming, Mr. Chairman, I would like to thank her for the letter that she wrote that was very well put together and very informative and I thank you for that."

Ms. Lynn Hoover: "My name is Lynn Hoover and I'm on the Planning Commission. I live at 1342 Cypress Campground Road, Ridgeville. Ridgeville is in Dorchester County, but I live in Berkeley County. And I served on the Task Force and we did spend a year talking back and forth with a lot of compromise and we came up with some key elements we felt were vital to making mining work in Flex-1. We did not want to close out the idea of mining in Flex-1. We came up with the idea that scale was very important. We need a small scale is acceptable. Five acres and under would be acceptable and would be....we would be able to use that as a conditional use. But if something was going to go....the reason for that it is finite. It doesn't go on forever and ever. Neighbors know how long it is going to go on. They know it has an end to it. But if a mine is going in that is over five acres, it can drag on for years and years. And it really affects peoples' quality of life. We looked at scale. We looked at in order to make it acceptable to neighbors so that it would be a distance of 1,000 feet from a home or from a daycare just out of respect for those people who are already there. Do you have questions for me? (No Response) I think it is really important for us to understand that we do want to have a good economy in Berkeley County and we do want to provide fill dirt. But we also want to have a good quality of life. I was a teacher in Berkeley County for 33 years and I want the students, my former students to have jobs. But I also want them to have a good place to live where there is not a mine right on top of them. Just back it up a little bit. If it is going to be a large mine, make sure that it...that you are showing respect to the people that are already there. I also want to make a point that if a mine is five acres, according to my map which could be questionable, that is a 161,000 cubic yards of dirt in a five acre or less mine. Up to that amount. That is a lot of dirt provided under a conditional use. Only if it were going to be a bigger one would you have to go through the special exception process. I would also like to say that special exception process has a lot of advantages. Berkeley County is full of historic sites and special unique situations. We could come up with criteria that would address very, very specific, rigidly specific criteria. But, I'm not sure that is what we want to do. Because we have situations that where there are communities that are unique. According to DHEC regulations don't take into account historical buildings and historical things unless it is going to do actual damage. A few years ago we had a subdivision that was going to come in next to Strawberry Chapel. The ordinance was not written so that we could, the County could necessarily stop that. It brought up a major weakness in the County. By having the criteria not so broad that they're totally subjective but with a little bit of room, you can take into account specific situations. I hope that you will give this a lot of consideration. There was a lot of time and effort put into it. A lot of compromise and the idea is to come up with something that we can have our cake and eat it too so that everybody can prosper with it."

Chairman Farley: "Thank you, Ms. Hoover."

Committee Member S. Davis: "Make sure it is vanilla. Jack likes vanilla cake.
(Laughter)

Committee Member Schurlknight: "Make that chocolate."

Committee Member S. Davis: "Ms. Mary Luttrell, you want to come forward?"

Ms. Mary Luttrell: "It was a long year."

Chairman Farley: "Could you give us your name and address?"

Ms. Luttrell: "My name is Mary Ann Luttrell, 211 Seahorse Lane, Huger. Committee and Council, thank you for this opportunity to be before you today. It was a very long year and we had a lot of heated conversations and I would like to echo what Lynn said. We feel, those that were on the Task Force, that what you have before you is a compromise. It was long fought for and probably...I'm probably on the furthest end perhaps and maybe Mr. Hand is on the other furthest end. We were representative of those kind of factions that had to come together. There are a couple of things, I was trying to listen to your questions and concerns so that we can have...perhaps address those. Certainly a lot, rightfully, was discussed about property rights and one of the things that I want to alert your attention to is the residents, rural residents, businesses, etc. that are already in a community have property rights as well. What we are trying to do here is to balance those property rights. The property rights of those that want to mine their property and the property rights of those that are neighboring those mining locations. We thought, those of us that are in favor of special exception, is what better process to find a balance. Let the miner give their proposition. Get the neighbors or adjoining property owners that are there actually before those people. Living there, investing that area before those people. Have their opportunity to express their opinion. The feeling was never really anti-mining. It's more of a thought of kinda like Planning and Zoning philosophy of the proper siting of a mine in terms of truck routing, impact on neighbors, etc. What's the proper siting? So property rights, DHEC, I'm personally involved in the contingency mine situation that probably sparked this whole thing. One of the things that I wanted to share with you, I'm intimately aware of what DHEC does and does not regulate. Their ordinance states that they must approve a permit unless, so the burden of proof is on the public, not upon the mining industry as the statute is written. DHEC protects...they must approve a permit unless there could be shown impact on wildlife, etc. We talked about, I think it might have been Mr. Call that was listing through houses, roads, etc. One of the things that was confounding as a citizen to go through this process is that they will, if they were here today, they would say, Yes, we are....we can under our statute, protect the physical building. What they are saying is that they will deny a permit if there is adverse impact on the structure, but not the people that worship in those structures, live in those structures or frequent those businesses or anything else. It is a physical issue. The other thing that was alarming as a citizen to find out is that they regulate only the pit. They do not concern themselves with anything outside of the pit. So if you could separate mining from its attending truck traffic, that might not be a problem. But if you have a very active, busy, commercial mine and several hundreds of trucks, dump trucks a day, in and out that mine. That truck traffic is a vital and integral part of that mining operation. DHEC does nothing to regulate the truck traffic. The trucking part of mining. We also learned that there is no one in the State, no agency in the State that you can go to for a public safety issue as far as truck traffic is concerned. The Department of Transportation is only concerned with the physical condition of the road and the adequacy of it to bear that truck traffic. The Department of Public Safety, you are barking up the wrong tree. We were advised by one of the Board members of DHEC that it probably fell through the cracks when DOT and the Department of Public Safety split up. But that is firmly placed. DHEC will

tell you in any of those meetings the quality of life issues, pedestrian and vehicular safety, the safety of people living and worshipping, etc. in those buildings that they are protecting, that is the responsibility of your County government. So here we are. One of the things that I think that Mr. Pinckney mentioned, I just wanted to clarify something. You were talking about needing dirt for roads. That falls under the State definition of borrow pits. They can be put anywhere. One of the things that and this is hopefully not sound combative, but it is an interesting thought that if the kind of sand and dirt that we want is only found in certain areas. It is so vital and so benign, then why don't we allow it in all zoning districts, just like borrow pits are allowed. I think there was probably only one other comment and this was the reason why we kinda scaled the five acres because there was a lot of conversation about people wanting to have ponds and be able to make some money on their land. So again, like Lynn said, it was a matter of scale. If you are coming with a mining application into a community or into anywhere really, if it is five acres and could have been seven acres, eight acres, I don't know, but that is what we landed on was five acres. It had something to do with....I won't bore you with the details, but it had something to do with the DHEC tier regulations. One of the big concerns of a community is, particularly with a large mining operation is if it gets into your community, it will be there forever. I'm going to pick on Mr. Hand here, just because he is such a nice fellow, we had some fine times. The mine on Clements Ferry Road was originally permitted for 35 feet deep and for five years. It is now seventeen years later and it is 90 feet deep. Essentially again, the burden of proof from DHEC perspective, that the South Carolina Mining Act is administered by a division of DHEC that is in charge of mining and minerals, etc. Unless the miner is doing something wrong, and they have violated some aspect of their permit, of course they are going to grant them that and there is no more public hearings and all that business. I think that might be it. Do you have any questions?"

Committee Member Schurlknight: "Mr. Chairman?"

Chairman Farley: "Yes sir, Mr. Schurlknight."

Committee Member Schurlknight: "Are you finished, Ms. Luttrell?"

Ms. Luttrell: "Actually, if you will just give me two seconds to see if there was something else while I have my two minutes of fame here. One of the other things that I just wanted to point out in terms of the amount of investment that miners have to make in getting their permit that we have talked about, isn't that difficult thing to get to the end of the road and find that you can't get BZA approval. Just for you to know, those expenses, the borings, the monitoring wells, the pump test, this that and the other thing, the wildlife surveys, all that stuff, those are all requirements of DHEC. Those are in my view, of course, it's my view, development costs. That's business development costs. Is the dirt there? Is there going to be a draw down that is unacceptable to DHEC? What is the archeological review? There are a lot of hoops that the miners have to go through, but they would have to go through them whether we made them go through...we are not making them go through them. We're just saying, gives us that information and you don't have to duplicate it. In my view as a former business person, that's a business development cost. It shouldn't be considered in what the appropriate zoning and land use decision. I think that is it. Does anyone have any questions for me?"

Committee Member Schurlknight: "Mr. Chairman?"

Chairman Farley: "Yes sir, Mr. Schurlknight."

Committee Member Schurlknight: "Ms. Luttrell, just for clarification, you had mentioned a few minutes back about if the resources were so scarce we might need to put it in all zones. Are you making an insinuation that we can dig anywhere in Berkeley County to get this material?"

Ms. Luttrell: "No, I am just saying that is.....one of the arguments is as I understand it, that we have to go...this is one of those precious material kind of things. We have to go where the material is."

Committee Member Schurlknight: "That is a valid concern that you could get those in factions. I might be taking that a little...because I am the one that mentioned that and I just want to make sure that....."

Ms. Luttrell: "I know because we talked about this in our Committee. What I am saying is that you have all kinds of others....let's say R-12. It might be a scarcely, not densely populated area that could be.....that is one thing that we talked about. But what I am saying is that if we have to go where the dirt is, there might be other zoning districts where it is appropriate or could be tolerated as well."

Committee Member Schurlknight: "And that's a good suggestion too."

Ms. Luttrell: "I guess in my final note, the thing that I was going to say was that it just seems if we're going to...want to permit mining in Flex-1, which again I am not anti-mining, I pro-appropriate siting, is that it is almost inconceivable to me that you could be considering to put a heavy, potentially long term commercial operation in an area where people may or may not be living without giving them a voice in the process. It's just....I can't even conceive that that could even be possibly be fair."

Committee Member Schurlknight: "Mr. Luttrell, let me ask you this, if we can't put it there, where are we going to go? To the urban areas and put it...we are looking in the rural areas to put this. Are we going on the peninsula and start digging? We've got to get the soil from somewhere and the rural areas naturally are the areas to go out and do that."

Ms. Luttrell: "I'm not in argument with that."

Committee Member Schurlknight: "No madam, I am looking for suggestions."

Ms. Luttrell: "Like I said, I think this ordinance is the way to go or at least the way to go and see if there is something that appears in the process. What this is saying is...I don't know, maybe there could be some kind of...Eric is the planning expert...maybe there could be some

kind of preliminary looksee or something like that. We did discuss in the Task Force there are huge blocks of land that are Flex-1 in Berkeley County that would not disturb a soul. And that is where they should be located in my opinion.”

Committee Member Schurlknight: “Thank you. That is all I have.”

Chairman Farley: “Thank you, Mr. Schurlknight.”

Committee Member Pinckney: “Mr. Chairman?”

Chairman Farley: “Mr. Pinckney”

Committee Member Pinckney: “In all fairness to Mr. Hand, I asked him this question. Ms. Luttrell since ya’ll are on opposite ends of the spectrum, do you think that with this current amendment, with some tweaking and what have you, that we could actually working collectively together and getting the politics out of it, that we could actively make it work for the citizens of Berkeley County as well as the mining industry?”

Ms. Luttrell: “I would like to respectfully submit that what you have before you is that document. Neither side is happy with this 100%. What I’m saying is that I think that we did a lot of compromising. I’m sorry, am I not answering your question?”

Committee Member Pinckney: “No, what I am saying with some further tweaking, evidently like the beginning of the work day. We could look at that and some other things as well to make it work for everybody concerned.”

Ms. Luttrell: “Well, again, each one of these items, each one of these little...you know, is it five acres or is it seven acres, or is it ten acres or is it five acres. Is it 7:30 or 8:00 or 6:30? We went...trust me, it was every other week..yes, if that were the only thing, yes, who knows. We did a lot of....”

Committee Member Pinckney: “And I know you did and I appreciate that. We thank you for that.”

Ms. Luttrell: “I think we would all say we produced the best document we thought we could produce. We tried all kinds of things. We tried circles and number of people in circles and you know, number of people along roads and all kinds of things. We tossed a lot of things up there.”

Council Member Call: “Mr. Chairman?”

Chairman Farley: “Mr. Call”

Council Member Call: “The definition of a dirt mine or a borrow pit has eluded me. Did I hear you make a distinction between the two? And if you did, would you repeat that.”

Ms. Luttrell: "You did and Eric can clear this up if I misspeak. A borrow pit under the State definition, is dirt that is taken...is borrowed to be used in highway construction and it may be borrowed any place the State wants it, regardless of your zoning district. So what we are talking about here is not..."

Council Member Call: "But it never goes back? It never goes back....and a dirt mine is the same thing to me. I don't hear the distinction."

Ms. Luttrell: "A dirt mine is excavating dirt for sale for non-highway construction or building projects, etc."

Council Member Call: "I fail to see the difference what it is used for if it is sold."

Ms. Luttrell: "I don't know. I didn't make the rules. That is the State's definition. So for clarity and to keep everyone out of the courts and paying lawyers lots of money, we on the Task Force opted to adopt the State definition of borrow pit and mine so that we could all stay on the same page."

Council Member Call: "How about the DHEC public hearing process? Don't they have a public hearing process and couldn't they have it here? Or couldn't we have it and send them the records from it?"

Ms. Luttrell: "I doubt they would..."

Council Member Call: "You were talking about public input. That is what I am trying to do to see if we get public input to DHEC."

Ms. Luttrell: "They have a public hearing process when they receive a permit application, they..if there is...I don't remember if there is an expression of ten or more parties of adjacent..they notify the adjoining landowners. And if those adjoining landowners...a certain critical mass of them say that they want a public hearing, they have one. Again, personally, the things that I learned the hard way about what DHEC protected you from and what they didn't protect you from is also what I kind of what I learned about what the public hearings are all about. The public hearing is of course, for them to hear your concerns perhaps on wells or draw down or wildlife that you know is available. But they are really taking that information for their use in determining whether or not they are going to issue a permit and or what other kind of studies they might be requiring of the applicant. They really...again, they do not regulate your quality of life. They don't regulate the character of your community or whether or not there is a public safety issue. Public safety...I swear they would stand here and say I'm sorry, public safety outside of the confines of the mine pit is not our problem."

Council Member Call: "You mentioned and this is just an observation of mine that Mr. Thompson's dirt pit on Clements Ferry Road had reached the depth of 90 feet. I think Mr. Thompson could reasonably argue that he owns that piece of land to the center of the earth and

could probably go as deep as he wanted to with it as long as the soil was satisfactory for engineering purposes. Am I wrong on that?"

Ms. Luttrell: "I don't know whether he owns the property and whether you are right or wrong or not. I guess what I am saying is if that is what you would be saying to the citizens in Flex-1 that if that person owns that piece of property and they say that they are permitting it for 20 feet deep and the likely length of the mine operations is going to be five years and they don't object based upon that and seventeen years later they are still in your neighborhood, I have a problem with that."

Council Member Call: "I can understand that, yes."

Ms. Luttrell: "So, what are their rights?"

Council Member Call: "I think when people buy land, they buy the mineral rights to the land and you don't know where they are. They may be a 1,000 feet deep."

Ms. Luttrell: "There are and I don't have them memorized, but there are traditionally there are four rights that come with property rights. One of them is to exclude anybody from your property that you don't want there. One of them is to do whatever you wish to do with it, for example, mining. There are two things that you are not permitted to do. One is to create a nuisance for people around you. So you cannot infringe on their rights and I am contending that we can...that DHEC may regulate the mine pit and the County may buffer...have no noise ordinances, etc. but there is absolutely no protection out there except for the County in protecting the nuisance of the scale of truck traffic coming from a large scale mining operation. That is your responsibility and yours alone."

Council Member Call: "I would like to see the truck traffic issue taken completely off the table because those are public roads and those trucks pay a dear price to be there."

Ms. Luttrell: "Well, I'm sorry. I can't take that off the table. That is the...here's an example of or particular instance. This would be an objective criteria that might be a road issue for example. Well not only are the conditions of the road terrible near this proposed mine, but there is absolutely no shoulder. Those are some objective criteria. Where are you going to walk? How are you going to get in and out of places with 200 trucks a day? Public safety is the County's responsibility because it is no one else's apparently."

Council Member Call: "You understand these trucks are very limited and it is very strictly enforced. Their weight and what roads they can travel with those weights. We would be superseding these Department of Transportation if we told these trucks that they couldn't use those roads even though they were qualified as far as weight goes and that the road would handle those trucks. However many axles they got on them. How much dirt they got on them. How much they weigh. And to tell them that they can't drive on that road."

Ms. Luttrell: "I understand what you are saying. That is the DOT's response when you contact them. If the road is rated for a certain truck, they are allowed to go. It doesn't matter if it is one or two hundred. My point is when you are looking to determine what is the proper zoning location...again, this is not anti-mining, what is the proper siting for a large commercial operation? Whether it be iron smelting or a manufacturing plant or a mine, it's the whole ball of wax. You can't extract it...just the mine from the picture. The mine and the scale of the truck traffic. That has to be considered as the entire enterprise in my opinion in terms of determining appropriate zoning."

Council Member Call: "I fail to see what the scale of truck traffic has to do with the condition of the road. As far as the weight and the frequency of the trips, but I guess we will get to that at another time. Thank you, Ms. Luttrell."

Chairman Farley: "Thank you, Mr. Call. Thank you, Ms. Luttrell. I have a motion?"

Committee Member Schurlknight: "And a second."

Chairman Farley: "Can you restate the motion for the record, Mr. Pinckney?"

Committee Member Pinckney: "Yes, my motion was we hold this particular amendment and do some further review on it."

Chairman Farley: "Thirty days?"

Committee Member Pinckney: "I don't think nobody is in no real big hurry about it, is it? Let's do sixty. It is so critical, why rush through it. I realize you spent a lot of time on it already but, I want to make sure that it is well baked since the land is not going any place. Is that something with that Eric? Excuse me, 60 days, is that too far out?"

Mr. Greenway: "The only thing that I would need for you all to clarify for me if there is something that staff needs to do within that 60 days. Do you guys want us to set up a workshop for you all to talk about this issue?"

Committee Member Pinckney: "I think that would be good."

Mr. Greenway: "I think that might be a good approach to have a workshop on the requirements of the ordinance so we can all understand where we came from and what is in the ordinance and where we need to be to achieve the balance."

Committee Member Pinckney: "Can I put a sliding scale on it, 30 to 60 days?"

Mr. Greenway: "We did a sliding scale with the Task Force and it took a year, so.... I don't think that is a problem."

Chairman Farley: "Yes sir, Mr. Davis"

Committee Member S. Davis: "I would ask that if we do the 60 days that staff...what you call it workshop...that all County Council members be participated beyond just the Land Committee."

Chairman Farley: "Ok. Mr. Call brought up the fact before we vote that he would like to hear from Mr. Coker."

Council Member Call: "He wrote a very detailed descending opinion that I would to see if he could condense it a little bit if he would."

Chairman Farley: "Mr. Coker, would you like to say just a few words, if that is possible?"

Mr. Ben Coker: "I'm Ben Coker, 124 Pinewood Drive, Moncks Corner. I've Vice-President and General Manager of Ashley Land Surveying in the Summerville area of Berkeley County. I would like to say that it has not been a more ardent supporter of property rights in this county than I have been for the last twelve years because everyone of you gentlemen and Ms. Davis have heard from me on property rights issues in the last twelve years. I want to say that I agree with Mr. Carter and some of you that we do have concerns in the County over the mining issue. But I would also like to say that I do not believe this ordinance is the mechanism through which we can resolve these problems. I do believe that we can resolve these problems but I don't believe this apparatus will do it. I want to express some of my concerns. I'm deeply concerned about the BZA hearings. Not only that they replicate the DHEC hearings that are already required, but because of the results that I have personally observed and some of the decisions that have arisen out of BZA decisions that even required their reversal at later times. Whenever I thought that decision should have been affirmative the first time. I don't believe that the BZA and this is my opinion as a businessman of 37 years in the civil engineering and surveying business, I don't believe that some of these decisions evolving from the BZA are based on factual data, objective data, if you wish. I believe that they are more subjective. At least on some of them and I will be happy to corroborate my statements to each and every one of you that I make tonight. The operation time. I have a great deal of concern about operation times that is contained in this ordinance. I'm usually on a construction site at 7:00 in the morning and the equipment is running and ready to grade material out and compact it. When I'm driving to my office at 6:10 or 6:15 in the morning time, I see a lot of trucks. I see buses. I see farmers hauling product to the market. And now this ordinance is going to tell the contractors that you can't receive any material until 8 or 8:30, maybe even 9:00 in the morning. This would delay productivity by an hour and one half to two hours. This will augment the cost greatly, greatly augment the cost of the performance of the work. Now when I use the term affordability, I'm not referring to the cost that the contractor incurs. I'm referring to the cost that John Doe taxpayer pays. When I was on the Task Force, I asked the question, why don't we concern ourselves with the affordability of this ordinance and the reasonableness of the ordinance? And I was advised that reasonableness of the regulation and the affordability to the taxpayer cannot be issues for which we would reject a certain issue contained in this ordinance. I diametrically disagree with that, very respectfully of course. But I do think that the cost of that product to the

consumer and the taxpayer of Berkeley County has to be a consideration in the adoption or rejection of this ordinance. I don't believe that we should place a limit on the life of a business. This would be the only business that the County would tell them the life span of that business. I believe they should be able to harvest that product and market that product until the product is depleted and the mine site would be reclaimed and approved by DHEC. I realize that the citizens of the county have quality of life and safety issues and I agree with that. I think that we can address these issues by incorporating regulations and to the conditional use, land use regulations and avoid the BZA issue. I do believe that we have to be sensitive, Mr. Pinckney, to our citizens in the rural areas. They have property rights just as much as I or any other citizen. But I realize that we cannot insulate our citizens from every undesirable noise that occurs. Commerce requires us to have waste sewer plants. Requires us to have chicken farms, pork farms, etc. and these are not very desirable either. But are we going to do away with them also? I think not."

Committee Member Pinckney: "We don't let them in the Flex area."

Mr. Coker: "The point that I am making is that I do believe that we can be sensitive to these issues that have been expressed tonight without going to extreme limits articulated in the ordinance. Having said that, I'll be happy to provide my concerns to you in written form. I'll be happy to answer any questions."

Chairman Farley: "Any questions?"

Committee Member Pinckney: "No sir"

Chairman Farley: "I'll call for the vote. I have a motion and a second. All in favor to hold it for 60 to 90 days with a workshop..."

Committee Member Pinckney: "30 to 60"

Chairman Farley: "All in favor? (Ayes) All opposed Nay? (No Response) Motion carries."

It was moved by Committee Member Pinckney and seconded by Committee Member Schurlknight to hold for 30 – 60 days prior to First Reading an ordinance to amend certain sections of Ordinance No. 01-8-35, the Berkeley County Zoning and Development Standards Ordinance, as amended, by deleting references to borrow pits and creating conditions and provisions for the regulation of mines within the Flex-1, HI and LI zoning districts. The motion passed by unanimous voice vote of the Committee.

C. Consideration prior to First Reading of the following:

1. Request by Colpar, Inc. requested by **T. B. Daniels**, located at the end of Diplomat Lane adjacent to I-26 near the College Park Road Interchange, Ladson, **Portion of TMS# 242-00-03-052 & TMS# 242-00-03-065, 066, -070 (6.3 +/- Total Acres), from R-2, Manufactured Residential District to GC, General Commercial District.** Council District No. 5.

[Staff recommended approval]

[Planning Commission recommended approval – Vote 3-2]

Committee Member S. Davis: “Move for approval”

Committee Member Schurlknight: “Second”

Chairman Farley: “We have a motion and a second. All in favor? (Ayes) All opposed Nay? (No Response) Motion carries.”

It was moved by Committee Member S. Davis and seconded by Committee Member Schurlknight to **approve** prior to **First Reading** the **Request by Colpar, Inc.** requested by **T. B. Daniels.** The motion passed by unanimous voice vote of the Committee.

2. Request by MeadWestvaco- Various Entities, located in the general vicinity of Rose Drive and Turtle Pond Road along Highway 17A, Summerville, TMS# **221-00-00-137, -062, -083, -092, -087, -088, -089, -145 & 221-16-01-019, -020, -022, -038** (49 +/- Acres) from **PDMU, Planned Development Mixed Use District & R-1, Single Family Residential District to PDMU, Planned Development Mixed Use District.** Council District No. 4.

[Staff recommended approval]

[Planning Commission recommended approval – voted unanimously]

Committee Member C. Davis: “Move for approval”

Committee Member Schurlknight: “Second”

Chairman Farley: “I am going to before we vote on this, I am going to read it since it is First Reading. I’m going to read the TMS into the record. (The Request was read) I have a motion and a second. All in favor? (Ayes) All opposed? (No Response) Motion carries.”

It was moved by Committee Member C. Davis and seconded by Committee Member Schurlknight to **approve** prior to **First Reading** the **Request by MeadWestvaco-Variou Entities.** The motion passed by unanimous voice vote of the Committee.

Mr. Greenway: “We need to make just one clarification about this. There are some unique situations associated with the road profiles and the landscaping criteria that is associated with this request. Staff does not have a problem with this proceeding through to First Reading but we hold Second Reading on this particular item until the Engineering Department and the applicant has an opportunity to work through the landscaping and road issues associated with this development. They are proposing some unique profiles for road construction and landscaping here with this development and we are going to have to get the Engineering Department comfortable if we can do that before we allow this to proceed through the process. The Engineering Department has a set of written concerns that I will be emailing to you all some time tomorrow. I was not able to get those tabulated for you today.”

Chairman Farley: "Ok. Thank you very much."

3. Request by John Hopkins, 1531 Highway 52, Moncks Corner, TMS# 162-00-01-042 (6.75 Acres) from GC, General Commercial District to R-1, Single Family Residential District. Council District No. 8.

[Staff recommended approval]

[Planning Commission recommended approval – voted unanimously]

Committee Member S. Davis: "Move for approval"

Committee Member Pinckney: "Second"

Chairman Farley: "I have a motion and a second. All in favor? (Ayes) All opposed? (No Response) Motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Pinckney to **approve** prior to **First Reading** the **Request by John Hopkins**. The motion passed by unanimous voice vote of the Committee.

4. Request by James Morrison, 1833 Highway 6, Pinopolis, Portion of TMS# 082-00-01-076 (0.22 Acres) from Flex-1, Agricultural District to GC, General Commercial District. Council District No. 7.

[Staff recommended approval]

[Planning Commission recommended approval – voted unanimously]

Committee Member Pinckney: "Move for approval"

Committee Member S. Davis: "Second"

Chairman Farley: "I have a motion and a second. Is there any discussion? (No Response) All in favor? (Ayes) All opposed? (No Response) Motion carries."

It was moved by Committee Member Pinckney and seconded by Committee Member S. Davis to **approve** prior to **First Reading** the **Request by James Morrison**. The motion passed by unanimous voice vote of the Committee.

D. Review prior to Second Reading of the following:

1. Bill No. 11-04, an ordinance to amend certain sections of Ordinance No. 01-8-35, the Berkeley County Zoning and Development Standards Ordinance, as amended, to provide for the regulation and duration of non-conforming uses in the various zoning districts.

Committee Member S. Davis: "Move for approval"

Chairman Farley: "We have a motion. Do we have a second?"

Committee Member C. Davis: "Second"

Chairman Farley: "I have a motion and a second. All in favor? (Ayes) All opposed? (No Response) Motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member C. Davis to **approve** prior to **Second Reading, Bill No. 11-04**. The motion passed by unanimous voice vote of the Committee.

E. Review prior to Third Reading of the following:

1. Bill No. 11-01, an ordinance to amend certain sections of Ordinance No. 01-8-35, the Berkeley County Zoning and Development Standards Ordinance, as amended, to provide for the regulation of building and structure height within the residential, rural, commercial and industrial zoning districts.

Committee Member S. Davis: "Move for approval"

Chairman Farley: "This has to do with the building heights. I have a motion. Do I have a second?"

Committee Member C. Davis: "Second"

Chairman Farley: "I have a motion and a second. All in favor? (Ayes) Motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member C. Davis to **approve** prior to **Third Reading, Bill No. 11-01**. The motion passed by unanimous voice vote of the Committee.

2. Bill No. 11-02, an ordinance to modify the official Zoning and Development Standards Map of Berkeley County, South Carolina, Re: William D. Farrior, IV, located adjacent to 4758 Highway 41, Huger, TMS #202-00-00-011 (0.92 +/- acres), F-1, Agricultural District to RNC, Rural and Neighborhood Commercial. Council District No. 8.

Committee Member S. Davis: "Move for approval"

Committee Member Pinckney: "Second"

Chairman Farley: "I have a motion and a second. Is there any discussion? (No Response) All in favor? (Ayes) All opposed? (No Response) Motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Pinckney to **approve** prior to **Third Reading, Bill No. 11-02**. The motion passed by unanimous voice vote of the Committee.

Chairman Farley: "I will entertain a motion to adjourn."

Committee Member S. Davis: "Move for adjournment"

Committee Member Pinckney: "Second"

Chairman Farley: "I have a motion and a second. All in favor? (Ayes) All opposed? (No Response) We are adjourned."

It was moved by Committee Member S. Davis and seconded by Committee Member Pinckney to **adjourn** the Committee on Land Use meeting. The motion passed by unanimous voice vote of the Committee.

The meeting ended at 8:26 pm.

May 9, 2011
Date Approved